

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

KODEY S. JAMES,

Petitioner,

vs.

No. CV 19-00673 KWR/JHR

WARDEN ROSA,

Respondents.

ORDER TO SHOW CAUSE

THIS MATTER is before the Court *sua sponte* under Fed. R. Civ. P. 41(b). Petitioner Kodey S. James filed his Petition Under 28 U.S.C. § 2241 for a Writ of Habeas Corpus on July 22, 2019. (Doc. 2). Petitioner also filed an Application to Proceed in District Court Without Prepaying Fees or Costs. (Doc. 1). On March 4, 2020, the Court denied Petitioner's motion for leave to proceed *in forma pauperis* on the grounds that Petitioner's Motion disclosed more than sufficient assets to pay the \$5 filing fee for this proceeding. (Doc. 5 at 1). The Court ordered Petitioner James to pay the \$5 filing fee for this habeas corpus proceeding within 30 days. The Court also notified James that, if he did not pay the \$5 filing fee, the case could be dismissed. (Doc. 5 at 2). More than 30 days has elapsed and Petitioner has not paid the \$5 fee. Therefore, the Court will require Petitioner to show cause within thirty (30) days of entry of this Order why this case should not be dismissed for failure to comply with the Court's Order.

This is a habeas corpus proceeding under 28 U.S.C. § 2241. The filing fee for a § 2241 proceeding is \$5. 28 U.S.C. § 1914. Petitioner did not pay the \$5 filing fee but, instead, filed his Application to Proceed in District Court Without Prepaying Fees or Costs. (Doc. 1). The Court conducted the analysis of the financial information, including the inmate account statement,

submitted by Petitioner under § 1915(b)(1) and determined that Petitioner has sufficient financial resources to prepay the \$5 filing fee for commencement of the action. (Doc. 5 at 1). On March 4 2020, the Court denied Petitioner leave to proceed pursuant to § 1915 and ordered Petitioner to pay the full \$5.00 filing fee within 30 days. (Doc.5 at 2).

Petitioner James was denied leave to proceed *in forma pauperis* based on his financial ability to pay the \$5 fee. (See Doc. 1 at 5-6; Doc. 5 at 1-2). He was ordered to pay the \$5 filing fee within thirty (30) days. (Doc. 5). Petitioner did not pay the \$5 filing fee within the thirty-day time period and has never paid the \$5 fee. The Court may dismiss an action under Fed. R. Civ. P. 41(b) for failure to prosecute, to comply with the rules of civil procedure, or to comply with court orders. *See Olsen v. Mapes*, 333 F.3d 1199, 1204, n. 3 (10th Cir. 2003). Petitioner will therefore be ordered to show cause, within thirty (30) days of entry of this Order why the case should not be dismissed for failure to comply with the Court's March 4, 2020 Order and failure to prosecute this action.

IT IS ORDERED that Petitioner Kodey S. James show cause, within thirty (30) days of entry of this Order, why this case should not be dismissed for failure to comply with the Court's March 4, 2020 Order and failure to prosecute.


UNITED STATES MAGISTRATE JUDGE